IN THE HIGH COURT OF JUDICATURE AT BOMBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9950 OF 2004

1. Union of India through)
General Manager,)
Central Railway, Mumbai CST,)
)
2. Divisional Railway Manager,)
Central Railway, Bhusawal)
Division, Bhusawal) .....Petitioners.

V/s

Mr. Vasant Namdeo Tayade,)
Ex- M.R. Casual Labour, Central)
Central Railway, residing at)
Post Kinhi, Taluka Bhusawal,)
District : Jalgaon.) .....Respondent.

Mr. S.C. Dhawan with Mr. T. J. Pandian for Petitioners.

Mr. D.V. Gangal for the Respondent.

CORAM: **H.S. BEDI, C.J.,** &
V.M.KANADE, J.

DATE : **OCTOBER 12, 2006**

ORAL JUDGMENT: (Per H.S. Bedi, C.J.)

1. The petitioners before us are the Union of India through the Divisional Railway Manager, Central Railways. The respondent was the applicant before the Central Administrative Tribunal, Mumbai Bench. The respondent shall, hereinafter, be referred to as "the applicant". The facts are that the applicant joined the services with the Railway Administration as a monthly casual labour with effect from 1st April, 1974 in the Catering Unit at Jalgaon. From 1st April, 1987, the Catering Units were privatized as per the directives of the Railway Board and the services of the applicant as a casual labour were dispensed with. It appears that, thereafter, the applicant and several others like him, were offered seasonal appointment by the Railways which continued off and on till 1991. The applicant aggrieved by the refusal of the railways to restore him to service filed A.O. No. 931 of 1998 before the Tribunal, and made a prayer that his services had been wrongly dispensed with from 1st April, 1987, that he was entitled to continue to remain in service till the date of his superannuation on

30.6.1998/30.6.2000 and had his services been regularized as in the case of his colleagues Gulsherkhan & Geetabai, he too would have been entitled to the payment of pension. The petitioner/respondent filed their counter-affidavit and contended that the applicant had been engaged as a casual labour in 1973 and had been granted monthly rated status from 1st April, 1974 and that as the Catering Unit had been privatized, his services had been terminated around 1st April, 1987. The plea of the applicant that his services were *pari materia* with that of Gulsherkhan and Geetabai was denied. This application was dismissed by the Tribunal on 4th September, 2002 on the ground of delay and laches whereupon the applicant filed Writ Petition No.2954 of 2003 in this Court. This Petition was allowed on 25.2.2004 and the Tribunal was directed to dispose of the matter on merits and in accordance with law. It is, in this eventuality, the matter was again heard by the Tribunal. The Tribunal observed that though the applicant had been engaged as a casual labour in April, 1973, he had been granted monthly rated status with effect from 1st April 1974 in the Catering Unit at Jalgaon and that he had been continuously working upto 10th March, 1987

when his services had been terminated by an oral order. The Tribunal accordingly held that as the applicant had been working for more than twelve and half years and no adequate reason has been spelt out as to why his services had been terminated in the above manner, he was entitled to claim temporary status at the time when his services had been terminated. The Tribunal further observed that the applicant had not been screened for the purpose of regularization of his services during the period of twelve years or more and no reason had been spelt out for this inaction. The Tribunal finally held that as no opportunity had been given to the Petitioner to defend his case which violated the principles of natural justice, the termination order was bad and against the law. The plea of the applicant that his case was identical with Gulsherkhan's case was, however, rejected. The Tribunal, as a corrolary, directed that the Petitioner be treated as being on temporary status and as it was not open for the Tribunal itself to direct regularization of service, the matter was remitted to the Railway Administration for further proceedings in that regard. Paragraph 18 of the order of the Tribunal in which

the broad principles were laid down, reads as under:-

> "18) We have discussed above that oral termination order passed by the Railway authorities is contrary to law and against the principles of natural justice. In this view of the matter, we are of the considered view that the oral termination order is required to be quashed. We order accordingly and direct the Respondents to treat the Applicant deemed to have continued in service till his superannuation. The Railway Administration shall take immediate steps to screen the Applicant who has not been screened at any time for the purpose of regularizing his services and if he is found suitable he be absorbed from the date of regularization of his immediate junior was absorbed. He shall be entitled for all retiral benefits as per rules as a result of his regularization. We would like to clarify that the Applicant will be deprived of the backwages for the period deemed to be continued till superannuation on the principle of no work no pay. The continuity of service and all other

> notional benefits on that basis will be available to him. The Respondents are directed to comply with the above directions within a period of 4 months from the date of receipt of a copy of this order."

Being aggrieved by the aforesaid directions, the present Writ Petition has been preferred by the Union of India.

2. The learned Counsel for the Petitioner has argued that the primary plea of the applicant that his case was *pari materia* with that of Gulsherkhan had been repelled by the Tribunal itself, no further relief ought to have been granted to him. It has also been pleaded that as the applicant had accepted casual appointment from 1987 to 1991and no appointment had been offered to him after that year and no challenge had been made for so many years, no successful challenge could now have been made to an event of the year 1987. It has further been pleaded that pensionary benefits were available only to regular employees as was clearly borne out by Rule 31 of the Pension Rules, 1993. The learned Counsel for the applicant has, however, pointed out

that only a direction had been issued that the case of the applicant be considered for regularization and only if found suitable would the other benefits follow. It has also been submitted that as per the Judgment of Gujarat High Court in *Rukhiben Rupabhai Vs. Union of India and Ors*[1] and Hon'ble Supreme Court in *Ram Kumar & Ors. Vs. Union of India & Ors*[2] an employee having temporary status was entitled to the benefit of pension.

3. We have considered the arguments advanced by the learned Counsel for the parties and after going through the record and the impugned order we find that there is no cause for interference. We find that the question of delay or laches has been dealt with by this Court in its order dated 25.2.2004, and need not detain us. Concededly, the petitioner had worked for about twelve and half years with the Railways when his services had been abruptly terminated and that too by an oral order. It is, in this eventuality, the Tribunal has held that it was appropriate that the applicant be screened for the purpose of

1. 2006(2) A.T.J. 1
2. 1996(1) A.I.S.L.J. 116

regularization and in case he was found suitable, to receive his retirement benefits as per law. The learned Counsel for the Petitioner has, however, laid great emphasis on Rule 31 ibid to contend that only a regular employee was entitled to pension. This plea has been controverted by the learned Counsel for applicant/respondent by referring to the judgments already cited above. Be that as it may, the direction of the Tribunal is (at the first instance) to screen the applicant for the purpose of regularization of service and, if found suitable, he would still not be entitled to backwages and the benefit of past service would be given only for the purpose of computation of pension. We thus leave it open to the Petitioner- Railway Administration to consider the implication of Rule 31 as amended and the judgments cited by the learned Counsel for the applicant in support of his claim to pension. We further direct that the direction of the Tribunal to screen the petitioner be complied with within a period of three months from the date of receipt of a certified copy of this judgment. With these observations, we dismiss the Petition.

CHIEF JUSTICE

V.M. KANADE, J.